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Where is California Taking Water Transfers?

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Introduction

An important piece of California's water puzzle is the voluntary transfer of water from one water user to another. Every year hundreds, perhaps thousands, of water transfers take place between water users within water districts. These districts have their own rules for the initial allocation of water to their users. Water transfers allow individuals the opportunity to obtain water from others within their district to the benefit of both parties. Water transfers between water districts within the same water basin are becoming more common. A rather brisk business in water transfers has developed within the lower San Joaquin Valley. Local rules allow districts through groundwater banking agreements or other joint water development projects to transfer water. In many cases local rules provide members the right of first refusal to those within an arrangement before the extra water is transferred to outside parties. This is the backdrop to the developing picture of broader water transfers in California.

Recent Changes in Water Transfer "Rules"

The passage of the Central Valley Improvement Act (CVPIA) in 1991 changed the operating rules of the federal Central Valley Project (CVP) to allow water users within CVP to transfer water among users in prescribed situations. In 1995 and 1996, the State Water Project (SWP) negotiated the "Monterey Agreement," which among other things changed the operating rules of the SWP to allow banking and limited water transfers among SWP users. These two expansive water projects serve water to a large portion of California's Central Valley and the Southern San Francisco Bay Area. In addition, the SWP extends water service to Southern California and the southern Central Coast. The rules that govern water transfers within the SWP or CVP typically protect water users within one of these projects from the potential adverse effects of water transfers

made by other project members. These changes have opened up a limited water market within these projects.

In addition, in the mid-1980s and 1990s the Legislature passed several laws making it easier to transfer water beyond the boundaries of historical water service areas. These laws are aimed at protecting water users who are not a party to the transfer and fish and wildlife from being “injured” or “unreasonably affected” by the transfer. These laws developed an expedited process for State Water Resources Control Board (SWRCB) to expand the water rights of those conducting a short-term (one-year) water transfer. The process requires SWRCB to make findings within 45 days that other water users are not injured and that fish and wildlife are not unreasonably affected by the water transfer. Once these findings are made, the water right is modified to allow the water right holder to serve on a temporary basis additional places of use or to use alternative points of diversion. The receiving party gets the use of the water but does not obtain any rights to the water. The rights are maintained by the original water right holder. Water service to the additional places of use becomes a contract issues between the parties. Service is at the discretion of the original water right holder, the willing seller.

Recent Water Transfers. How Are They Working?

The water transfer processes appear to be working. In 2001 and again in 2002 extensive water transfers involving transfers across the Sacramento-San Joaquin Delta (Delta) have taken place without the controversy experienced in the past. In 2001 (a dry year) over 600,000 acre-feet of water involving the Delta were transferred. In 2002 (a dry below/normal year) over 300,000 acre-feet were transferred. This compares to about 800,000 acre-feet in 1991, which was the largest water transfer year of record for transfers across the Delta and the first year of California’s Drought Water Bank. The Water Bank established the Department of Water Resources (DWR) as the purchaser of water for all parties who wished and had the physical capability to participate in water transfers across the Delta. Less amounts of water were transferred in subsequent Water Banks through 1994. Beginning in 1995 California experienced a series of wetter-than-normal years, and the need for water transfers decreased substantially.

Controversy regarding the effects on water users, fish and wildlife, and economic interests strained the Water Banks of the early 1990s. However, in the last few years DWR and water districts in Northern California have developed better mechanisms to deal with the needs of local water users and the environment. Some local water districts with the technical assistance from DWR put into place cooperative monitoring programs, and rapid response programs that were implemented to address water-level issues. In 2001 and again in 2002 two large Northern California water districts/agencies transferred water through the substitution of groundwater pumping for normal surface water diversions.

Data from monitoring programs and open communication with parties that could be affected helped identify groundwater issues as they developed and before adverse impacts became serious. Districts took actions to halt pumping, deepen wells, and work with parties that could be affected in order to alleviate impacts caused by water transfers. Also, DWR developed a water-level response plan for the southern Delta where transferred water is pumped. This program includes extensive modeling to warn water users two weeks before water transfer pumping is likely to affect low-tide water levels in channels where agricultural water users divert. The DWR installed portable pumps at no cost to agricultural water users to operate during low-water levels. The first year of this program was 2002, and by all accounts it was a success.

The possible impact of water transfers to legal users of water is a legitimate issue that needs to be taken seriously. Parties developing a water transfer need to provide assurances that their programs will not injure other legal users of water. With the cooperation of all the parties, programs like the ones mentioned above have been successful. In the past two years these programs have prevented the kind of problems seen in the early 1990s. Also, fish and wildlife concerns are being aggressively evaluated and resolved as an integral part of the water transfer proposal. Over the past few years the water agencies and districts and other agencies have been working with the California Department of Fish and Game and federal fishery agencies to put in place monitoring and remediation programs to address fish and wildlife concerns. Once controversial water transfers, are now being processed easily through the water right permit change petition process. More information is needed to address long-term water transfer concerns, and these parties are working together to get studies done that will resolve the issues. Rather than just debating the concerns of others, the water districts have found that concerns can be reasonably resolved with all parties working together.

Programs to resolve issues related to legal injury and impacts to fish and wildlife cost money. However, these costs need to be view as a long-term investment. The long-term viability of water transfers in an area rests on the ability of the transferring party to protect neighbors and the local environment. If water transfers are to continue, local issues need to be addressed in a fair and open process. Water transfers also can be good for the local community. For example, the Yuba County Water Agency has used over ten million dollars from the proceeds of water transfer sales over the past several years to fund badly needed flood control projects for the county.

Water Market Approach to Protect Third Parties

DWR purchases water for the newly created Environmental Water Account and the Dry Year Program for California. DWR has made it clear in recent water transfer papers that it only will be involved in the purchase of water from willing sellers who include in their proposals monitoring and mitigation

programs that resolve possible impacts to other water users and fish and wildlife (see www.watertransfers.water.ca.gov). DWR has evaluated its role as a water purchaser in light of the legislative guidance provided in the Water Code regarding water transfers. Through this evaluation DWR has defined the nature of the water it wishes to purchase in much the same way that any consumer in the marketplace decides the nature of the products to be purchased. These definitions are seen as a step toward creating a more equitable water market that addresses early in the process the impacts to third parties. These same issues and the development of mechanisms to resolve them are part of a settlement process between Northern California water users, the CVP, and the SWP regarding the role Northern California should play in making water available to assist in meeting water quality standards in the Delta.

What About the Strategic Idling of Farmland?

One outstanding issue is the role that taking farmland out of production should play in water transfers. In the past most water transfers involved the transfer of unused surface storage or the substitution of groundwater for historical surface water use and the transfer of the resulting unused surface water supply. Although there are issues with these transfers that must be addressed, experience has shown, as stated above, that these kinds of issues can be resolved when the parties work together and invest some of the water transfer sale proceeds into monitoring and mitigation programs. However, the possible third-party economic effects of idling farmland for a water transfer can be extremely controversial. Certainly, California wants to maintain its agricultural economy. Farming is a central part of California's history and will continue to be an important part of California's future. However, farming is being threatened by economic forces outside California, and the farming community is rethinking its role for its own survival. Farm prices for key crops like rice and cotton have fallen dramatically. Cotton prices are about what they were in the 1960s. A way to keep farming viable may be to evaluate the use of water sales in a strategic manner that provides extra income in some years yet maintains the farming support infrastructure. DWR has received many requests in the last several months related to idling of crops and the purchase of the water supply that is saved. Water sales are also being proposed in a tentative manner to address the issues in the Imperial Irrigation District transfer to the City of San Diego to help address issues in California's use of Colorado River water supplies.

Water sales are not necessarily an anathema to the farming industry. Rather, water sales can be one of many tools used to keep the farm economy healthy. Studies from the limited land idling program of the Metropolitan Water District of Southern California's and Palo Verde Irrigation District indicate that 93 percent of the income from the water sale was reinvested into the local economy. In 2001 water was transferred between CVP water users in the Sacramento Valley to CVP contractors in the San Joaquin Valley. This transfer included

about 90,000 acre-feet of water resulting from crop idling. Information from this transfer indicates that while seed and fertilizer sales were lower than expected, the laser guided land-leveling business was brisk.

Farming is a business. Farmers should be given an opportunity to design land idling programs that work economically for them and their local community. Such a program would likely include limitations on the amount of land in an area that could go out of production in order to distribute and lessen economic impacts, the rotation of idled lands, and land practices to prevent weed or dust nuisances or wildlife problems. If the program is used to justify the sale of water, it must also be able to demonstrate the amount of water that would have been consumptively used in the absence of the program. This decrease in consumptive use in most cases will establish the quantity of water that can be transferred without injuring other legal users of water or the fish and wildlife. While outside parties can provide impetus to such a program, it is the local community that needs to develop a program that works for them.

DWR is evaluating the economic impacts to third parties of land idling proposals. It is working with farmers and local communities to evaluate methods to keep economic impacts within ranges experienced in the past and developing workable mechanisms that can mitigate those impacts if they fall outside the ranges.

Conclusions

So, where is California taking water transfers? Water transfers will not solve all the State's water issues, but they are pieces to the puzzle. Californians are learning how to put together water transfers in ways that protect other water users from injury and prevent unreasonable effects on fish and wildlife, and, in some cases, make conditions better for fish. Water transfers will continue to be used to redistribute local water supplies among water users. They are a key part of the developing settlement regarding Northern California's contribution to water quality issues in the Delta. They are also a key part to the Environmental Water Account that helps protect fish in the Bay/Delta Estuary in a manner that does not adversely affect the water supplies of the CVP and SWP. Short-term transfers have and will continue to help Californians deal with droughts and to distribute water between willing sellers and buyers. In the past, this has involved temporary idling of farmland in limited ways that did not cause economic hardships. In the future, more structured programs may be developed for different types of water transfers. These transfers will be centered on protecting legal users of water from injury, protecting fish and wildlife resources from unreasonable effects, and will include land idling proposals that address measures to prevent unreasonable effects to the local community.